THE NATIONAL HEALTH LAWYERS ASSOCIATION

ANTITRUST IN THE HEALTH CARE FIELD

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ALTERNATIVE DELIVERY SYSTEMS:

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the circumstances have been an unreasonable restraint of trade." 691 F.2d at 685.

While we believe decision is incorrect, if anything, it should be read as an implied repeal case, not establishing a new or different substantive standard under the antitrust laws.

8) *Wilk v. American Medical Association,* 1983-2 Trade Cas. (CCH) ¶ 65,617 (7th Cir. 1983).

Alleged boycott of chiropractors, effected through ethical canons, while itself normally *per se* illegal, was not subject to *per se* analysis. Defendants would be permitted to show that the restraint, in the circumstances peculiar to a learned profession: 1) was based on a genuine concern about the scientific validity of the patients' treatment; 2) that this concern was objectively reasonable; 3) that this concern was the dominant motivating factor in promulgating the canon and the conduct intended to implement it; and 4) that the concern for scientific method in patient care could not have been adequately implemented in a manner less restrictive of competition.

Although case deals with boycott, not price-fixing, its special rule of reason defense is not needed to protect legitimate ethical rules, and it has potential for undermining *per se* standard in other contexts, *e.g.,*

Professional Engineers case, where concern about safety held no defense to anticompetitive ethical restraint against competitive bidding.

b) *Vertical price-fixing—*

1) *FTC Advisory Opinion—Health Care Management Associates (June 7, 1983).*

(1) limited to 10-15 percent of area providers;

(2) purchaser market of about 30% of area's employed population;

(3) no agreement on price/discount terms by competing providers.

(4) the program, "in essence, would be a form of vertical arrangement between individual sellers of services (cooperating providers) and purchasers of services (third-party payers, on behalf of their insureds or beneficiaries) for the sale and purchase of health care services." (p. 3).

"It appears ... that the [Plan] ... is likely to be procompetitive, both by generating competition between cooperating providers and other local providers and by increasing competition among third-party payers." (p. 4).